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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of ZHONG CHEN and  
MO ZHOU.

ZHONG CHEN,  
Respondent,

v.

MO ZHOU,  
Appellant.

A152590

(Alameda County  
Super. Ct. No. HF12628565)

Mo Zhou appeals a judgment resolving dissolution proceedings between Zhou and her ex-husband Zhong Chen. She contends the court erred in granting Chen's request for entry of judgment pursuant to Code of Civil Procedure section 664.6 and in denying her related motion for a new trial. We find no error and, therefore, shall affirm the judgment.

**Background**

The parties filed for divorce in May 2012, after a 15-year marriage. At the time they had two teenaged children. Following mediation during which both parties were represented by counsel, an agreement regarding custody and support was reached: Zhou was to have sole physical custody of the children and the parties would share joint legal custody. Chen agreed to pay \$7,500 a month in child support. Spousal support was set at zero but reserved until 2022. Zhou agreed to waive any claims based on bonuses that Chen might receive. The agreement also divided the couple's property.

The terms of the agreement were recited on the record at a hearing on September 16, 2014. Both parties agreed that by entering the agreement before the court they were giving up their right to a trial. Specifically, Zhou was advised that “even though it has not been put into writing, [the agreement] is effective right now. So tonight, if you . . . feel like your husband owes you another \$5,000 for debt or something, it’s too late.” Thereafter, the court ordered the terms of the agreement as its final judgment and directed Zhou’s counsel to prepare a written judgment.

On August 8, 2016, Chen filed a request for entry of judgment pursuant to Code of Civil Procedure section 664.6. Chen’s declaration explained that since their agreement was entered on the record, they had been unable to finally resolve the terms of a written judgment. Chen also requested attorney fees pursuant to Family Code section 271 and submitted an income-and-expense declaration in support of the request. Zhou opposed the request for entry of judgment on the ground that the judgment proposed by Chen was inconsistent with the terms as recited at the 2014 hearing. Zhou submitted a competing proposed judgment. She also challenged the accuracy of the financial information contained in Chen’s declaration and income-and-expense declaration, and of the financial information on which the stipulation had been based.

The matter came on for hearing on September 7, 2016. The court indicated that it would review the proposed judgments, compare them to the transcript of the September 2014 hearing, and sign a judgment at the next hearing. In response to Zhou’s argument that the amount of child support was too low compared to Chen’s income, the court advised, “Your lawyer may need to file a motion. Child support can be changed at any time. This judgment is just a snapshot of what was true in 2014, and it can be changed. [¶] If I had a motion today, I could change it today. So you need to meet with somebody, and if you believe that this child support is no longer correct, just file a motion and we’ll change it. This doesn’t stay the same. The same with spousal support.” The court further advised Zhou that if she believes that “the 2014 orders were based on some kind of fraud” she should file a motion and it would be heard at the next hearing.

On October 3, 2016, Zhou filed a request to modify the stipulated support order on the ground that Chen had failed to file a preliminary disclosure as required by Family Code section 2107. She also claimed that at the time of the mediation, Chen was not truthful about his employment and had concealed a substantial bonus and other income.

Between October 2016 and June 2017, the court held numerous hearings on matters not directly concerning the entry of judgment, including Chen's visitation with the children and Zhou's request for a restraining order. On June 26, 2017, the court issued an order granting Chen's request for entry of judgment. The order reads in part:

“[Zhou's] objection to entry of the judgment is based on the following positions: that the judgment prepared by [Chen's] attorney does not reflect the agreement of the parties as recited on the record; that [Chen] never served his Preliminary Disclosure documents; that [Chen] withheld or produced incomplete or inaccurate information about his income and assets. In his final letter brief dated 6/14/17, [Zhou's] counsel cites [Family Code section] 2107 as directing that the relief requested is mandatory due to [Chen's] failure to prove he exchanged Preliminary Declarations of Disclosure with [Zhou]. [¶] To consider and rule on these issues, the Court has examined the complete file in this case, as requested by [Zhou]. This examination has revealed the following: [¶] Between the pro per initial filings of the Petition and Response in 2012 and the substitution of attorneys for each party in 2013, no Declarations of Disclosure or other pleadings were filed. [¶] After [Chen's] attorney entered the case, he filed an Income and Expense Declaration with w-2s and paychecks attached on 5/16/13 and a Declaration of Final Disclosure on 5/17/13. [¶] [Zhou] filed a Request for Order for child and spousal support as well as attorney's fees 5/30/13. In her Declaration [Zhou] states: ‘[Chen] has income of approximately \$20,000/month base plus significant expatriot benefits and regularly vesting stock grants which provide additional income.’ [Zhou's] attorney's declaration states, in part: ‘his ([Chen's]) reported income of over \$450,000 in 2012.’ The attorney's declaration further estimates the marital estate as ‘(nearly 3M per [Chen's] Preliminary Declaration of Disclosure . . . .’ [¶] [Chen's] Responsive Declaration to the RFO, filed 7/11/13 states: ‘I have provided my preliminary and final disclosure. . . .’ [¶] This RFO

was continued and no hearing was ever held on these matters, as the case was settled, as set forth below. [¶] On 10/10/13 [Chen] filed an OSC for Bifurcation of status. In his supporting declaration he again states ‘I have provided both my Preliminary and Final Declaration of Disclosure.’ [¶] On 11/8/13 the parties appeared for Settlement Conference and the court's minutes reflect that they agreed to exchange requested information and to obtain an appraisal on the Shanghai property. [¶] On 12/9/13 [Chen’s] attorney filed his Declaration Regarding Service of Preliminary Declaration of Disclosure. Typed in at item 2 on the form are the words: ‘Prior to my current atty records (pre-4/26/2013)’ and the date May 30, 2013 is typed in as the date of service. [¶] At the 12/10/13 hearing on the Bifurcation request, [Chen’s] counsel appeared and the minutes reflect that ‘The preliminary declaration of disclosure is to be amended no later than 12/20/13.’ The motion for bifurcation was submitted to the Court as a stipulated judgment signed by both parties and their attorneys. [¶] On 12/18/13 [Chen’s] attorney filed a Declaration Regarding Service of Preliminary Disclosure which changed item 2 to indicate service by email on 3/21/13. (again prior to [Chen] retaining counsel). This Declaration was signed by [Chen]. [¶] The parties and their attorneys appeared in Court 1/17/14 and submitted an agreement regarding spousal and child support based on income to [Chen] of approximately \$26,000 per month. The agreement included additional support payable as [Chen] received additional income, pursuant to a ‘bonus table.’ Also on 1/17/14 the parties held a settlement conference and set their case for trial. [¶] On 3/25/14 [Chen] changed attorneys. [¶] On 6/24/14 [Zhou] substituted herself in place of her attorney. [¶] On 7 /21/14 [Zhou] substituted a new attorney in place of herself. [¶] On their trial date of 9/16/14 the parties recited a full agreement on the record. They were accompanied by their new attorneys. They then began following these agreements, apparently in all areas, including child visitation, transfer of assets and payment of child support. [¶] There is nothing in the record that supports [Zhou’s] claim that the agreement is based on inaccurate or incomplete information. Her claims are based on her conclusionary statements and not on corroborating evidence. [¶] During 2014, the parties each submitted Settlement Conference Statements. [Chen’s] referenced

his serving of both his Preliminary and Final Disclosure documents and [Zhou's] Statements never raised the issue of [Chen] failing to do so. [¶] When [Chen] first filed his RFO in 2016 regarding entering Judgment, [Zhou] filed her Opposition through attorney Mark Ruiz on 8/24/16 in which she states her opposition is based on 'the grounds that the proposed judgment differs from the Reporter's Transcript of the Proceedings dated September 16, 2014.' She further states: '[Zhou] is willing to sign a judgment that accurately reflects the record.' [¶] [Zhou] has subsequently claimed that she never received [Chen's] Preliminary Disclosure documents, delivered by email. She further claims that he must produce that email in order to prevail in his position that it was sent. She finally claims that the Judgment cannot be entered, or must be set aside under the mandatory provisions of [Family Code section] 2107. [¶] The Court declines to find that [Chen] failed to serve his Preliminary Disclosure documents based on the record in this case. The date and manner of [Chen's] service of his Preliminary Disclosure documents was discussed repeatedly by the parties and the Court. [Zhou] NEVER indicated she had not received these documents. [Chen's] failure to now locate an email that was sent over three years ago does not prove that the email was not sent. He bears no such burden to prove his actions at this late date. [¶] [Zhou] further claims that [Chen] did not accurately report his income or the value of the community assets. She claims he forged her signature on joint tax returns. In support of this later claim, [Zhou] does not produce evidence other than her own statement. The joint tax returns were available to her (as one of the filers) and they were prepared by a third party. No declaration by the tax preparer was provided to support [Zhou's] contention. No objective analysis of either [Chen's] income or of the community assets was provided. [Zhou's] remedy is to bring the motion she brought for support. [Chen's] income available for support can be examined as part of that process. It is not necessary or appropriate to use these questions as a basis to set aside or otherwise invalidate the parties' Stipulated Judgment on Reserved Issues. [¶] Based on [Zhou's] behavior during the pendency of this case, in which she was represented by counsel at all crucial moments, in which discovery was conducted and documents exchanged, in which she received an apparently fair division of

an almost three million dollar community estate, and in which she never raised an issue about receipt of [Chen's] Preliminary Disclosure documents, the value of assets, or [Chen's] income, in which [Chen's] Preliminary Declaration of Disclosure was repeatedly discussed in such detail that the Court's minutes reflect the need to amend his declaration to accurately reflect the method and date of service, the Court finds that there is no legal basis to refuse to file the Judgment on Reserved Issues or to set aside that stipulated judgment."

Shortly thereafter, Zhou filed a motion for new trial challenging the granting of Chen's motion. Her motion was denied and judgment was entered thereafter. Zhou timely filed a notice of appeal.

### **Discussion**

Pursuant to Code of Civil Procedure section 664.6, "[i]f parties to pending litigation stipulate, . . . orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement." In ruling on a motion to enter judgment, the trial court acts as the trier of fact, determining whether the parties entered into a valid and binding settlement. (*Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1454; *In re Marriage of Hasso* (1991) 229 Cal.App.3d 1174, 1180.) The court may in its "discretion . . . ' . . . receive oral testimony or may determine the motion upon declarations alone.' " (*Richardson v. Richardson* (1986) 180 Cal.App.3d 91, 97.) The trial court's ruling on all factual issues "must be upheld where supported by substantial evidence." (*In re Marriage of Hasso, supra*, at p. 1180.)

Here, the trial court found that the parties entered into a valid and binding settlement. The court rejected Zhou's claim that Chen concealed his income or the value of the community assets. As the court noted, Zhou's conclusory statements are insufficient to establish concealment. Like the trial court, we find the record devoid of actual evidence of concealment. Zhou suggests the concealment is evident if we compare Chen's initial income and expense declaration, filed on May 2013 with his 2012 tax

return. Assuming a discrepancy,<sup>1</sup> the trial court found that Zhou had access to the couple's joint 2012 tax return before entering the settlement agreement in 2014. Substantial evidence supports the court's finding. Specifically, the record contains emails between Zhou and Chen in late 2012 and early 2013 discussing the 2012 tax return. Zhou asserts that the emails discussed only drafts of the 2012 return and that Zhou forged her signature and refused to produce the final return until 2016. Only then did she discover that Chen "had enormously understated his income on all of his income and expense declarations." Zhou produced no evidence, however, to corroborate her claims and the trial court reasonably rejected them. Zhou was on notice of the complications in this case and had an obligation to satisfy herself regarding the fairness of the agreement. Before the settlement was entered, Zhou's attorney wrote, Chen "lives in China where he has a high-paying ex-patriot job with complicated benefits and stock compensation. In addition the parties have multiple real properties in the United States and China [and] vested and unvested stock in [Chen's] employer." Counsel's declaration continued, "Mr. Chen has controlled the family finances and especially stock transactions. He has approximately \$20,000/month in base income and significant stock and added benefits which take his reported income to over \$450,000 in 2012. . . . [¶] This case requires significant subpoena and review of bank and brokerage information in order to ensure that [Zhou] receives her proper share of community assets in this relatively high-value case (nearly \$3M per [Chen's] preliminary declaration of disclosure and quite possibly more)." Accordingly, the record supports the trial court's conclusion that the parties entered a valid and binding agreement.<sup>2</sup>

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<sup>1</sup> Chen's income and expense declaration explains, "My W-2 reflects additional income for taxes paid on behalf of the Chinese Govt. so that I am not tax[e]d twice and reimbursement. They are not income."

<sup>2</sup> To the extent Zhou contends that Chen falsely asserted that he was anticipating his employment would terminate in 2014 "when he in fact had a job thereafter that has paid him a million dollars per year," her remedy is, as the court explained, to file a motion for modification of the support obligations based on the updated information.

The court did not, as Zhou suggests, “refuse to follow the law.” The court found that Family Code section 2107, subdivision (d)<sup>3</sup> was not applicable because Chen made all the required disclosures. The court’s order cites, among considerable other evidence, the admission by Zhou’s counsel in his May 30, 2013 declaration that they had received Chen’s preliminary declaration of disclosure. Accordingly, substantial evidence supports the court’s finding that all required disclosures were made.

Contrary to Zhou’s argument, the court did not abuse its discretion in failing to take testimony from the parties before entering the judgment. Although Zhou attempted to testify and cross-examine Chen regarding the financial dispute, she did so during the hearings involving the custody dispute and application for a restraining order. The court properly focused the testimony on matters relevant to those issues. At the June 2, 2017 hearing, when the court addressed entry of judgment, Zhou did not request an evidentiary hearing. The record in this case is voluminous. Zhou was given every opportunity to submit documentary evidence. In addition, the court was very familiar with the parties, both having testified repeatedly before the court on other issues. Zhou makes no showing that additional live testimony would have added anything of significance to the record or to the court’s resolution of the concealment or any other issue in the case.

Accordingly, the trial court properly entered judgment based on terms of the settlement recorded before the court in September 2014. Zhou’s motion for new trial, which asserts the same arguments rejected on appeal, was properly denied.

### **Disposition**

The judgment is affirmed.

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<sup>3</sup> Family Code section 2107, subdivision (d) reads in relevant part: “Except as otherwise provided in this subdivision, if a court enters a judgment when the parties have failed to comply with all disclosure requirements of this chapter, the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error.”



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POLLAK, P. J.

WE CONCUR:

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STREETER, J.

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BROWN, J.

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